IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 6 of 2000
with
Civil Application No.50 of 2000
in
SPECIAL CIVIL APPLICATION No 7129 of 1999
with
Letters Patent Appeal No.7 of 2000
with
Civil Application No.51 of 2000
in
Special Civil Application No.7366 of 1999
with
Letters Patent Appeal No.1103 of 1999
with
Civil Application No.8955 of 1999
in
Special Civil Application No.4045 of 1999
with
Letters Patent Appeal No.1107 of 1999
with
Civil Application No.8988 of 1999
in
Special Civil Application No.4686 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT SECONDARY EDUCATION BOARD

Versus

SUNNY DHARAMPALSINGH CHAUDHARY MINOR THRO FATHER

Appearance:

1. Letters Patent Appeal No.6 of 2000 :
MR AD OZA for Appellants
MR RS SANJANWALA for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 2

2. Letters Patent Appeal No.7 of 2000 :
Mr.A.D. Oza, Advocate, for the Appellants.
Mr.B.P. Tanna of Tanna Associates for respondent No.2
Rule not received back for respondent No.2.

3. Letters Patent Appeal No.1103 of 1999
Mr.A.D. Oza, Advocate, for the Appellants.
Mr.R.S. Sanjanwala for the respondent.

4. Letters Patent Appeal No.1107 of 1999
Mr.A.D. Oza, Advocate, for the Appellants.
Mr.B.P. Tanna of Tanna Associates for respondent No.1
Ms.Manisha Lavkumar, AGP, for respondent No.2.
Rule not received back for respondent No.3.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI and
MR.JUSTICE C.K.THAKKAR

Date of decision: 14/02/2000

Common C.A.V. JUDGEMENT:(Per D.M. Dharmadhikari, C.J.)

1. The present judgment in these Letters Patent Appeals shall dispose of the above two groups of Letters Patent Appeals, which are between the same parties on the same subject matter. The appeals have been preferred by the Gujarat Secondary Education Board against the order of the learned Single Judges of this Court, whereby its disciplinary action against the two students, viz., Chopra Sushant Shantichand, and Chaudhary Sunny Dharampalsinh, of cancelling their one academic examination for use of unfair means in the examination hall has been set aside.

2. The abovenamed students, whose Standard X examination conducted by the Gujarat Secondary Education Board had been cancelled, approached this Court by preferring Special Civil Application Nos. 4045 of 1999

and 4686 of 1999 and a learned Single Judge (Coram : M.R. Calla, J.), by judgment dated 21.7.1999 and 23.7.1999, granted relief, directing declaration of their results for the 10th standard examination. The learned Single Judge held that the alleged admission of the students, who are minors, given in the examination hall, under fear and pressure, could not constitute evidence for taking action against them. The learned Single Judge also held that there was breach of principles of natural justice as the students did not get fair opportunity to show cause against the proposed action.

3. Against the judgment of the learned Single Judge (Coram : M.R. Calla, J.), two Appeals, being Letters Patent Appeals Nos. 1103 of 1999 and 1107 of 1999, came to be filed by the Board and in the said Letters Patent Appeals, a Division Bench of this Court (Coram : K.G. Balakrishnan, C.J. & M.S. Parikh, J.), by order dated 19.8.1999, granted opportunity to the Examination Committee of the Board to hold a fresh enquiry into the allegation of use of unfair means by the students and, in the meanwhile, stayed the direction of the learned Single Judge to declare the results.

4. Pursuant to the second opportunity granted to the appellant-Board by the aforesaid Division Bench, the Examination Committee issued fresh show cause notices to the two students, and, after holding a fresh enquiry, passed two impugned orders against the students, holding them guilty of adopting unfair means in the examination and cancelled their result of the said examination.

5. Against the two separate decisions taken by the Examination Committee, the students again approached this Court by preferring Special Civil Application Nos. 7129 of 1999 and 7366 of 1999, which were allowed by a common judgment dated 30.12.1999 passed by a learned Single Judge (Coram : M.S. Shah, J.). The learned Single Judge granted relief to the students, holding that the evidence on record does not prove adoption of any unfair means of copying from a book by the students in the examination hall.

6. Against the order of the learned Single Judge (Coram : M.S. Shah, J.), two appeals, viz., Letters Patent Appeal Nos. 6 of 2000 and 7 of 2000, have been preferred. It is in this manner four Letters Patent Appeals on the same subject matter have come up for decision before us, which we are deciding by this common judgment.

7. The only facts relevant to be stated are that in the S.S.C. examination of March, 1999, on 27.3.1999, the students were giving examination on the subject of music. When a surprise check was made by the Squad in the examination hall, the two students were found in possession of book on music, from which they were copying. The booklets, from which the alleged copying was made in the examination hall, were seized from the students. The students in the examination hall gave a statement in writing, admitting the fact that each of them possessed a book on music and the same was seized when the Squad Officer made surprise check. The students then retracted their admission after a period of one month in their replies to the show cause notices, whereunder they were asked to explain as to why their aforesaid examination should not be cancelled. In their replies, the students stated that the admission of each of them being possessed of a book was given by them under fear and pressure, as, otherwise, they would not have been allowed to complete the answer book on the day of the examination. There is some difference in the stand taken by the two students before the Examination Committee, which is not very material. Both the students took a defence that before the Squad arrived, the students were warned to stop copying and surrender copying material to the Invigilator. After that announcement, there was pandemonium and disturbance in the examination hall. The students started throwing away books and materials they had brought in the hall for copying. The books seized from the students, according to them, had been thrown at them by other students and those were seized because they were found near their seats.

8. In the second enquiry held by the Examination Committee, after grant of full opportunity to the students, the Examination Committee recorded a finding that the admissions given by the students in the examination hall that they possessed copying material can be relied as the same cannot be held to have been given under pressure and fear. Had it been so, soon after they came out of the examination hall, they would have given a protest in writing, because, they were aware that action could be taken on the basis of their admissions. The Examination Committee also compared the answers given in the answer book and the alleged copying material seized from the students. On comparison of the answers in the answer book and the copying material, it was inferred that not only that the students had book on the subject of music with them, but they used it for copying.

9. Both the learned Single Judges considered the evidence led before the Examination Committee and came to the conclusion that admission given by the students in the examination hall, in an atmosphere of fear and pressure on them, could not be relied to sustain the action of the Board. The learned Single Judge (Coram : M.R. Calla, J.) held that "the evidence is not of probative value to hold that there is evidence of adoption of unfair means against the students". In the second round of litigation, the learned Single Judge (Coram : M.S. Shah, J.) made an attempt to reappreciate the evidence on record to come to a conclusion that even applying "the yardstick of preponderance of probabilities" applicable to domestic enquiries, the charge against the students was not established. The learned Single Judges, therefore, granted relief to the students, directing the Board to declare their results.

10. Learned counsel appearing for the Board mainly raised two question. Firstly, it was urged that the learned Single Judges of this Court exceeded their power of judicial review under Article 226 of the Constitution of India by sitting as an Appellate Court on the decision of the Examination Committee. This Court could not have reappreciated and weighed the evidence to come to a conclusion contrary to the one reached by the Examination Committee. Reliance is strongly placed on the decisions in Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and others, (1991) 2 SCC 716, Board of High School v. Ghanshyam, AIR 1962 SC 1110, Siddharth Mohanlal Sharma v. South Gujarat University, 1982(1) GLR 233, and Central Board of Secondary Education v. Vineeta Mahajan and another, 1994(1) G.L.H. 71 (S.C.).

11. On behalf of the students, the learned counsel representing them, made strenuous effort to support the orders of the learned Single Judges passed in their favour. It is contended that admission of the students in the examination hall, where an atmosphere of tension and pressure prevailed, was rightly held to be not an evidence to be relied to hold them guilty.

12. It is further contended that the Examination Committee in holding the students guilty of adopting unfair means, consulted some Expert on the subject of Music and, based on his opinion, came to the conclusion that the book of music, alleged to be in their possession and seized from them, was utilized for copying. It is submitted that there was flagrant breach of principles of natural justice as the Expert opinion, obtained behind

the back of the students, was never made available to them in the course of enquiry.

13. Two main questions arise for decision before us. The first is, whether the learned Single Judges of this Court, in going into the question of the so-called probative value of the evidence, exceeded their power of judicial review. The second is, whether the students, on the basis of evidence on record, including that of their admission recorded in the examination hall, could be punished for adopting unfair means.

14. The decision in the case of Ghanshyam (supra) of the Supreme Court (AIR 1962 SC 1110) settles the legal position in Administrative Law that the action of the Examination Committee on charge of use of unfair means in the examination hall by a student, having potentiality of an adverse impact on his career, is a quasi-judicial function and before taking the adverse action, the student concerned must be given a fair opportunity to show cause and / or a hearing. In the instant case, on the orders of the Division Bench in the two appeals mentioned above, being Letters Patent Appeal Nos.1103 of 1999 and 1107 of 1999, a second enquiry was held by the Examination Committee, in which full opportunity was afforded to the students and they participated in the enquiry. The domestic enquiry held in the campus or premises of the Board by educational authorities against students cannot be compared with proceedings in a criminal trial. As observed by the Supreme Court in the case of K.S. Gandhi and others (supra), { (1991) 2 SCC 716 } :-

> "... There is no scope for importing the principles of criminal trial while considering the probative value of probabilities and circumstantial evidence. The Examination Committee is not bound by technical rules of evidence and procedure as are applicable to courts .... "
>
> " ... The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a straitjacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the

same both in civil cases and domestic enquiries ...."

15. In the course of the second enquiry, the Examination Committee has taken into consideration the fact that while the students were caught in the course of copying by the Squad Officer, they gave statement in writing, admitting the fact of possession of copying material with them. The examinees, depending upon the class or standard in which they are studying, may be minor, or major. Merely because they are minor boys, it cannot be held that in domestic forum, their admissions cannot be relied on for the purpose of punishing them. Such a rule, if applied, would make it impossible for the educational authorities to maintain discipline in the campus and the examination hall. In the present case, when they were caught copying on a surprise check by the Squad Officer, they admitted in writing that they possessed copying material, which was seized from them and thereafter, they were allowed to complete the paper. The Examination Committee considered the defence of the students that the admission given by them in the examination hall was not voluntary, but was made under extreme tension, pressure and fear. The Examination Committee rejected their defence on the ground that soon after the examination was over, no such protest or defence, of admission having been given in writing under fear or pressure, was put forward by the students. The defence of such admission having been given under pressure or fear was set up after a month, when they were served with show cause notices for cancellation of their examination. It was, therefore, clearly an after thought on their part. This reasoning and conclusion of the Examination Committee in holding the students guilty cannot be held to be an unreasonable conclusion, which could be interfered with by the Court in exercise of powers under Article 226 of the Constitution of India. Under the Examination Rules, mere possession of a copying material in the shape of a paper or book is in itself a misconduct, for which punishment can be imposed on the student (See Rule 6 of the Rules regulating the examination and the following observations of the Supreme Court in Vineeta Mahajan (supra) { 1994(1) G.L.H. 71 (S.C.), respectively } :-

" ... ...

6. When a candidate has any map, text book, guide, notes written — The candidate should not be allowed to appear in subsequent four examin-

pertaining to relevant subject during the examination

ations and the result of relevant examination qua the candidate be cancelled.

... ... "

"... The Rule clearly defines " the use of unfair means at examination" and lays down in simple language a candidate having in possession papers, relevant to the examination. The sine qua non, for the misconduct under the Rule, is the recovery of the incriminating material from the possession of the candidate. The Rule does not make any distinction between bona fide or mala fide possession of the incriminating material. The High Court reasoning, that the candidate having not used the material - in spite of the opportunity available to her - the possession alone would not attract the provisions of the Rule, in our view, is not borne out from the plain language of the Rule. May be, because of strict vigilance in the examination hall the candidate was not in a position to take out the papers from the pencil-box and use the same. The very fact that she took the papers relevant to the examination in the paper concerned and was found to be in possession of the same by the invigilator in the examination hall is sufficient to prove the charge of using unfair means by her in the examination under the Rule .... "

The Examination Committee compared the answer given by the students and the book on Music found in their possession to come to a conclusion that the book was used for copying. To support their conclusion, they also sought opinion of an Expert on the subject, which was not supplied to the students. In the impugned orders of the Examination Committee, made after the enquiry for the second time, the Examination Committee has not made any reference to the Expert's opinion obtained by it. In our opinion, if the students can be held guilty of the first charge that they were found in possession of copying material when the Squad Officer made a surprise

check in the examination hall, we need not go into the other question whether the second charge that the book found in their possession was actually used for copying or not. In our opinion, the action of the Board is sustainable on the first charge itself and the Examination Committee cannot be held to have acted unreasonably in rejecting the the defence of the students on their alleged admission. The admission was obviously retracted as an afterthought much after they were caught in the examination hall in the course of copying. In the educational field, to hold that admissions by examinees in the examination hall cannot constitute evidence against them would be hazardous and against the maintenance of discipline. Where surprise checks in the examination halls are made, that is the general procedure adopted by the invigilators and the members of the Squad. There are no allegations against any of the authorities conducting the examination or the members or staff who had held the surprise check in the examination hall. There was no mala fide intention on the part of any one to falsely involve innocent students. In such domestic enquiries, particularly by educational authorities against the examinees or students, the interference of the Court should be extremely limited. The obvious reason is that the authorities alone know the methodology of the students and the atmosphere in which such misconducts are committed by the students. Findings reached on facts by such domestic forums would not be interfered with by the court merely on the ground of errors of fact. The writ jurisdiction is supervisory in nature, and a court exercising the same is not to act as an appellate authority and would not, ordinarily, review findings of fact, for, if it were to do so, these authorities would become merely transmitting agencies of evidence to the Court, and much of the advantage of administrative adjudication will be lost. Some degree of control on adjudicating authorities is, of course, necessary, but only to check their arbitrariness. A finding of fact reached by a domestic body can be quashed by the Court only if it is based on "no evidence" or is completely unsupported by evidence. Such is not the case here. The written admissions given by the students in the examination hall was `substantial evidence' and the learned Single Judges fell into the error of examining the facts by reappreciating the evidence and coming to their own conclusions. Such an exercise is not permissible in the process of judicial review, which examines the correctness of the decision making process and not the decision itself. If there is substantial evidence before the domestic authorities, the court should not interfere. As suggested by learned authors

M.P. Jain & S.N. Jain, in their "Principles of Administrative Law", Fourth Edition at pages 545 and 546, in examining the action of the domestic forums, the more broad-based rule of "substantial evidence" applied by the United States Supreme Court can better be made applicable to the restrictive principle of applying the test of "no evidence". As explained by the United States Supreme Court:-

> "... Substantial evidence" is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion .... " (Consolidated Edison Co. v. NLRB, 305 U.S. 197, at 229 (1938) ...."
>
> "... Substantial evidence is such evidence as might lead a reasonable man to make a finding. The evidence in support of a fact-finding is substantial when from it an inference of the existence of the fact may be drawn reasonably. In such a case, the reviewing court must uphold the finding, even if it would have drawn a contrary inference from the evidence .... "
>
> "... Substantial evidence i
>
> of the reasonableness, not of the rightness, of administrative findings of facts...."

16. In the case of K.S. Gandhi and others (supra), on which strong reliance has been placed on behalf of the students, the exercise of going into weighing and appreciating the evidence, as has been done by two learned Single Judges, was not approved by the Supreme Court by observing thus :-

> " ... The High Court ion our view overstepped its supervisory jurisdiction and trenched into the arena of appreciation of evidence to arrive at its own conclusions on the specious plea of satisfying "conscience of the court" .... "

17. As a result of the discussion aforesaid, we find that the judgments of the learned Single Judges cannot be sustained. They are set aside and the Letters Patent Appeals preferred by the Board are allowed.

18. In view of the above judgment, rule issued in Civil Application Nos. 50 of 2000 and 51 of 2000 in Letters Patent Appeal Nos. 6 of 2000 and 7 of 2000 is made absolute and the interim relief granted therein is confirmed. Civil Application Nos. 8955 of 1999 and 8988 of 1999 filed in Letters Patent Appeal Nos. 1103 of 1999 and 1107 of 1999, respectively, also stand disposed of.

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(apj)